

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

SMYRNA READY MIX CONCRETE, LLC

and

GENERAL DRIVERS, WAREHOUSEMEN AND  
HELPERS, LOCAL UNION NO. 89, AFFILIATED  
WITH THE INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS

Cases 09-CA-251578  
09-CA-252487  
09-CA-255573  
09-CA-258273

COUNSEL FOR THE GENERAL COUNSEL'S  
OPPOSITION TO RESPONDENT'S MOTION FOR EXTENSION OF TIME TO FILE  
RESPONDENT'S EXCEPTIONS AND BRIEF IN SUPPORT OF EXCEPTIONS DUE TO  
EXCUSABLE NEGLIGENCE

Counsel for the General Counsel hereby opposes the motion of Respondent, Smyrna Ready Mix Concrete, LLC, for an extension of time to file its exceptions and brief in support due to excusable neglect. <sup>1/</sup>

Respondent has failed to show that its late filing was due to excusable neglect. The NLRB's electronic filing procedures indicate that if the E-filing system is unable to receive documents for a continuous period of more than 2 hours after 12 noon (Eastern Time), the site will be declared to be in technical failure, and that technical failure prohibited a party from E-filing, then the documents can be filed by 5 p.m. (Eastern Time) on the next business day. Respondent has presented no evidence that the E-filing system was down for the required length of time to amount to a technical failure, and at this time, no such technical failure has been

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<sup>1/</sup> Charging Party Teamsters Local Union No. 89 has advised Counsel for the General Counsel that it also opposes Respondent's motion and will be filing a separate opposition.

declared.<sup>2/</sup> Indeed, Respondent has not produced any evidence establishing that it made any attempt to file its exceptions and brief in support before 10:48 p.m. Eastern Time.<sup>3/</sup> Allowing Respondent to file its late exceptions in this circumstance, where the site was unavailable for less than the required 2 hours, would render the bright line 2-hour rule allowing late filing useless.

Respondent's poor planning leading to its filing is not excusable neglect. In *Ridgewood Health Care Center, Inc., and Ridgewood Health Services, Inc., a Single Employer and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) and Ridgewood Health Service*, Cases 10-CA-113669 and 10-CA-136190 (October 22, 2015), 2015 WL 6429384 October 22, 2015, the Board rejected answering briefs from the charging party and general counsel that were filed only 5 and 6 minutes late, respectively. In doing so, the Board noted that the Board's e-filing terms warn potential filers not to wait until the last minute to file. *Id.* The Board specifically cited its E-filing terms, which state "Although the Agency's E-Filing system is designed to receive filings 24 hours per day, parties are strongly encouraged to file documents in advance of the filing deadline and during the normal business hours of the receiving office, in the event problems are encountered and alternate means of filing become necessary. . . a user who waits until after close of business on the due date to attempt to E-File does so at his/her own peril." (emphasis added) *Id.* Respondent has proffered no explanation for why it could not have filed before close of business hours of September 29, 2020, or why it waited until the last hour of the day to attempt to file. The NLRB E-filing system has not had an announced 2-hour technical failure outage.

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<sup>2/</sup> When such outages occur, notice of the technical failure determination are posted on the NLRB website. No such notice has been posted to date.

<sup>3/</sup> Respondent's offices are in Nashville, and it admits that the time stamps on its submitted documents are in Central Time.

Respondent's conduct does not amount to excusable neglect, and its exceptions and supporting brief should be rejected.

Counsel for the General Counsel respectfully requests that the Respondent's motion for an extension of time to file its exceptions and brief in support of exceptions be denied.

Dated: October 2, 2020

Respectfully submitted,

*/s/ Zuzana Murarova*

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## CERTIFICATE OF SERVICE

October 2, 2020

I hereby certify that I served the attached Counsel for the General Counsel's Opposition to Respondent's Motion for Extension of Time to File Respondent's Exceptions and Brief in Support of Exceptions Due to Excusable Neglect on all parties by regular and electronic mail at the addresses listed below:

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